

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MARK NOBLE, *et al.*,

Plaintiffs,

vs.

Civil Action 2:13-cv-0366  
Judge Watson  
Magistrate Judge King

WORTHINGTON INDUSTRIES, INC.,

Defendant.

REPORT AND RECOMMENDATION

The only claims remaining in this action are those originally asserted by plaintiff Brad Smith, whose death was suggested on the record. *Suggestion of Death*, ECF 56. Boyd and Kathleen Smith, who have been identified as the successors of the deceased plaintiff, *Suggestion of Death of Brad Smith*, ECF 63, were served with process in accordance with Rule 25 of the Federal Rules of Civil Procedure. *Status Report*, ECF 66. On January 13, 2015, Boyd and Kathleen Smith were directed to file a motion for substitution as plaintiffs in this action by April 7, 2015 if they intended to pursue the claims of the deceased plaintiff. *Order*, ECF 67 (citing Fed. R. Civ. P. 25(a)(1)). They were specifically advised that their failure to do so would result in the dismissal of those claims and of this action. *Id.* Boyd and Kathleen Smith have not filed a motion for substitution as plaintiffs. It therefore appears that they do not intend to pursue the only claims remaining in this action.

It is therefore **RECOMMENDED** that the claims of Brad Smith be

dismissed and that final judgment be entered in this action.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b).

The parties are specifically advised that the failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *See, e.g., Pfahler v. Nat'l Latex Prod. Co.*, 517 F.3d 816, 829 (6th Cir. 2007) (holding that "failure to object to the magistrate judge's recommendations constituted a waiver of [the defendant's] ability to appeal the district court's ruling"); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005) (holding that defendant waived appeal of district court's denial of pretrial motion by failing to timely object to magistrate judge's report and recommendation). Even when timely objections are filed, appellate review of issues not raised in those objections is waived. *Robert v. Tesson*, 507 F.3d 981, 994 (6th Cir. 2007) ("[A] general objection to a magistrate judge's report, which fails to specify the issues of contention, does not suffice to preserve an issue for appeal . . . .") (citation omitted)).

The Clerk is **DIRECTED** to mail a copy of this *Report and Recommendation* to Boyd and Kathleen Smith at 237 S. Greenlawn Avenue, Lima, OH 45807.

April 8, 2015

s/Norah McCann King  
Norah M<sup>c</sup>Cann King  
United States Magistrate Judge